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OFFICIAL

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Gudrun E. Huckett, Patent Agent

Applicant: Gisela Schon
Serial No: 09/807,410
Filed: 4/19/2001
Title: Seat
Examiner: Stephen A. Vu Art Unit: 3636

Commissioner for Patents
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION/ELECTION REQUIREMENT

In response to the office action dated 4/14/2004, Applicant request **reconsideration and withdrawal** of the election/restriction requirement issued by the examiner.

The instant application is a national stage application submitted under 35 USC 371 and therefore falls under the **unity of invention** practice as set forth in **MPEP 1893.03(d)**. This MPEP section sets forth (emphasis added):

Examiners are reminded that **unity of invention (not restriction) practice** is applicable in international applications (both Chapter I and II) and in **national stage applications** submitted under 35 U.S.C. 371.

MPEP 1893.03(d) explains the concept of unity of invention practice for national stage applications in detail (emphasis added):

When making a lack of unity of invention requirement, the examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group.

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The examiner states that the application "contains claims directed to more than one species of the generic invention" and that the species "lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1".

First of all, the unity of invention practice has nothing to do with **species** being claimed. The concept of **species** is used only in connection with restriction practice in applications filed under 35 USC 111 (MPEP 800) and must not be used in national stage application (see above quote from MPEP).

Secondly, the examiner has not set forth **different groups of claims** and has not explained why each group lacks unity of invention with each other group.

Rule 13.1 states that "The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention)". Rule 13.1 must be interpreted in connection with Rule 13.2 that gives meaning to Rule 13.1.

Rule 13.2 states "Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 **shall be fulfilled only when there is a technical relationship** among those inventions involving one or more of the same or corresponding **special technical features**. The expression "**special technical features**" shall mean those **technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.**"

The question then is not the presence of several species, since this concept solely relates to the election/restriction practice of applications filed pursuant to 35 USC 111 and is wrongly applied here, but the presence or absence of a common technical feature defining over the prior art. The relevant text of MPEP 1893.03(d) refers to the examples provided in Annex B Part 2 of the PCT Administrative Instructions as amended July 1, 1992, that are contained in Appendix AI of the MPEP. Examiner will see when looking at these examples that different articles or categories (method, apparatus etc) are considered a group of inventions.

In contrast to the examples provided in the Appendix, the present invention is directed to a **single invention, i.e., a seat having a particular drive action**. The seat has different embodiments but this is not a violation of unity of invention requirements.

The examiner states on page 2, 1st paragraph, that there are more than one species

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of the **generic invention**, while contradicting himself on page 3, in that he states that there is **no generic claim** (sentence following the list of claims correlated with Figures). Of course, claim 12 is a generic claim for all embodiments: the specific drive action of the seating surface is the general inventive concept of the **single invention** that is presented in this application. The application complies with Rule 13.2 because claim 12 provides at least one common technical feature (the drive action of the seating surface common to all seats in the application) and therefore presents a single general inventive concept under Rule 13.1.

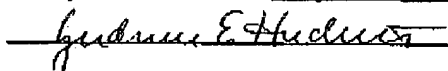
Since the examiner has not submitted any evidence that the technical feature(s) claimed in claim 12 **do not** define a contribution over the prior art, the technical feature(s) presented in independent claim 12 comply with Rules 13.1 and 13.2.

In order to comply with 37 CFR 1.143, applicant herewith elects the Figures 13-16, claims 12, 19-21, 24, 25-28, 34-39, for further prosecution **with traverse**.

Should the Examiner have any further objections or suggestions, the undersigned would appreciate an **e-mail communication** from the examiner to discuss appropriate amendments to place the application into condition for allowance.

Authorization is herewith given to charge any fees or any shortages in any fees required during prosecution of this application and not paid by other means to Patent and Trademark Office deposit account 50-1199.

Respectfully submitted on May 14, 2004,



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